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unobjectionable; the other judges regard it as objectionable, for the reason above stated.

Judgment reversed, and cause remanded.

Court of Appeals of New York.

WILLIAM D. ROBINSON, RESPONDENT, v. THE INTERNATIONAL LIFE ASSURANCE CO. OF LONDON, APPELLANT.

A local board of directors, established by a foreign corporation in New York, under regulations of the statute of that state, no matter how complete its organization or how full its authority to transact business without consultation with its principal, is still a mere agency, and not a distinct corporation.

Therefore a contract, as of insurance, made by this New York board with the plaintiff, a citizen of Virginia, was the contract of the foreign corporation with plaintiff, and the government of the foreign corporation being a neutral and having recognised the government of the plaintiff as a belligerent, the contract was not suspended by the civil war in America and payment of premiums to a sub-agent of the corporation, at Richmond, was a valid payment to the corporation.

The sub-agent at Richmond was appointed by the board at New York, and before the war had no authority to collect premiums until he was furnished with "renewal receipts," issued by the New York board. After June 1861, commercial intercourse between New York and Richmond being interrupted by the war, it was claimed by plaintiff that the sub-agent at Richmond had a verbal authority to receive premiums without being furnished with renewal receipts. The jury having found for plaintiff, this court must assume that there was such authority.

Such authority to receive payment implies authority to receive it in whatever was regarded as money at the time and place of payment. Confederate notes being so regarded and being received in good faith by the agent were a valid medium of payment, as between the plaintiff and the corporation.

THIS action was brought upon a policy of life assurance issued by the defendant by its local board of directors in New York to C. W. Macmurdo, December 8th 1845. The policy was in the usual form of such instruments. The premium upon the insurance was regularly paid by the assured, who was a resident of Richmond, Virginia, to and including the month of June 1861. After that down to the time of the decease of the insured, which happened in October 1862, the amounts becoming due for premiums under the policy were paid by the assured in what is known as Confederate currency. All the payments were made after the spring of 1858 to W. S. Cowardin, who was the defendant's agent at Richmond. He was appointed as such agent by the defendant's general agents at the city of New York. And

he received what were called renewal receipts, which were delivered to the insured from time to time for the premiums paid upon his policy down to about the month of June 1861. These renewal receipts were issued to the local agent by the general agents at the city of New York, and constituted his authority to receive the premiums. After June 1861, none of these receipts were issued to the local agent. But from that time it was claimed by the plaintiff that the premiums were received by the local agent under a special authority verbally conferred, by which the renewal receipts were from that time dispensed with. After the decease of the insured, the proofs required by the policy were furnished to the defendants, and the claim for payment was assigned to the plaintiff. Upon the trial a verdict was recovered by the plaintiff, and from the judgment entered upon it the defendant appealed.

J. W. Gerard, Jr., for appellant.—The sub-agency at Richmond was created by the New York board, and the London corporation knew nothing of it, and had no privity with the agent.

The company had a *double situs* in London and in New York, and the American branch was a separate and independent corporation as to business in the United States: *The Jonge Klassino*, 5 C. Rob. 302; *The Ann*, 1 Dodson 221; *The Antonio Johanna*, 1 Wheat. 159; *Elbers v. Ins. Co.*, 16 Johns. 128; Phillips on Ins. 112, § 164; *Society v. Wheeler*, 2 Gall. 105, 131; *People v. Cent. Railroad*, 33 How. Pr. 407; 1 Duer on Ins. 525. The domicile of a party is the test of his national character: 2 Lawrence's Wheaton 559–569; *McConnell v. Hector*, 1 Bos. & Pull. 113; 1 Duer on Ins. 495; 1 Kent 85–88, 10th ed.; *The Indian Chief*, 3 C. Rob. 12; *The Venus*, 8 Cranch 253; *Beebe v. Johnson*, 19 Wend. 500; *The Venice*, 2 Wall. 275; *The Frances*, 8 Cranch 363; *The Freundschaft*, 4 Wheat. 105. This doctrine prevails in the case of agency: *The Anna Catharina*, 4 C. Rob. 107; 1 Kent 87; *The San Jose*, 2 Gall. 268.

The state of war which existed made all parties resident in the two sections, *enemies* in contemplation of law: *Mrs. Alexander's Cotton*, 2 Wall. 404; *The Hiawatha Cases*, 2 Black 635; *Griswold v. Waddington*, 16 Johns. 438; Blatchford's Prize Cases, I, 556; Act of July 13th 1861, 12 U. S. Stat. 257; Proclamation

Aug. 16th 1861. The domicile of the defendant being in New York, its national character for the time was that of an American company, and all intercourse and business transactions between it and the plaintiff or the sub-agent at Richmond were illegal and void.

The state of war revoked the agency: *Carver v. Lane*, 1 E. D. Smith 165; Lawrence's *Wheaton* 557; *The Julia*, 8 Cranch 181; *The Rapid*, Id. 161; *Griswold v. Waddington*, 15 Johns. 57; 16 Id. 438; 1 Kent (10th ed.) 77; *The William Bagaley*, 5 Wall. 407; *Honger v. Abbott*, 6 Wall. 534; *Jecker v. Montgomery*, 18 How. 110; *Esposito v. Bowden*, 7 E. & B. 788.

A fortiori is the insurance of an enemy's goods, and particularly of his life, against public policy, and suspended during war, if not avoided by the war: 1 Duer on Ins. 417; 3 Kent 255; 1 Phillips on Ins. (3d ed.) p. 104, § 149; *Furtado v. Rogers*, 3 Bos. & Pul. 191; *Kellner v. Le Mesurier*, 4 East 396; *Gamba v. Le Mesurier*, Id. 407; *Brandon v. Curling*, Id. 410.

Even if defendant be regarded as a neutral sojourning here, it is against public policy to support this contract: 1 Duer on Ins. 623; *People v. Cent. Railroad*, 33 How. Pr. 407; *Kennett v. Chambers*, 14 How. 39.

There was no evidence of express authority to take Confederate notes, and such authority cannot be implied. They were not money, and an agent's authority to receive payment means in money strictly: *Matthews v. Hamilton*, 23 Ill. 470; *Todd v. Reid*, 4 B. & Ald. 210; *Russell v. Bagley*, Id. 395; *Dunlap's Agency* 280, 281; *Partridge v. Bank*, 58 Eng. Com. Law 396; *Grant v. Norway*, 73 Id. 457, 11 C. B. 457; *Ontario Bank v. Lightbody*, 13 Wend. 101; *Taylor v. Robinson*, 14 Cal. 396; *Story on Agency*, § 98, 10 Barn. & Cress. 760; *Barker v. Greenwood*, 2 Y. & Coll. 415; 5 Mees. & Wels. 645; *Howard v. Chapman*, 4 Car. & P. 508; 1 Starkie R. 233; *Underwood v. Nichols*, 17 C. B. 239; *Stewart v. Aberdeen*, 4 Mees. & Wels. 211, 228.

Dealing in these notes was illegal, and no authority can be implied to do an illegal act: *Clark v. Bank*, 3 Duer 241; *Wright v. Overall*, 2 Coldwell 345; *Craig v. Missouri*, 4 Peters 410; *Briscoe v. Bank of Kentucky*, 11 Id. 258.

E. R. Robinson, for appellee.—The power of the agent to

collect was not terminated by the war: *Griswold v. Waddington*, 15 Johns. 69; *Clark v. Morey*, 10 Id. 69; *Bell v. Chapman*, 10 Id. 183; *Buchanan v. Carey*, 19 Id. 136; *Conn. v. Penn.*, 1 Wash. C. C. 524; *Dennistoun v. Imbrie*, 3 Id. 396. The defendant is an *English* company, and the authority of its agent was not suspended by a war in which it was a neutral. The question as to the kind of money the sub-agent received is entirely between him and his principal. He was not expected to transmit the *identical notes* received to his principal.

This is a case of an executed contract, and as to such the courts have held that the payment in Confederate money will not be disturbed: *Phillips v. Hooker*, 7 Am. Law Reg. N. S. 40; *Turley v. Newell*, Phillips N. C. Eq. Rep. 301; *Green v. Sizer*, 40 Mi. 530; *Murrell v. Jones*, Id. 565; *Henley v. Franklin*, 3 Coldwell 472; *Brown v. Wylie*, 2 W. Va. 509; *Abbot v. Dermott*, 34 Ga. 227.

The opinion of the court was delivered by

DANIELS, J.—It appeared by the evidence given upon the trial of this cause that the defendant at the time of the issuing of the policy in suit, and at all times since then, was an insurance corporation, created by an Act of the English Parliament, and as that was its legal character, although it had complied with the laws of this state, providing for the manner in which foreign insurance companies may carry on and transact the business of insurance within this state, it nevertheless still remained and continued an English corporation.

The law of this state, however, conferred authority upon the defendant only to transact its business within the state of New York. It could not, and did not, authorize or empower it to appoint an agency or carry on its insurance within the state of Virginia. Whatever it did in that respect was done by virtue of the laws of comity of that state. And for that reason no particular reference will be required to the provisions of the statute under which foreign insurance companies are permitted to carry on the business of insurance in the state of New York.

It is sufficient for the purposes of this case to assume that the defendant was lawfully engaged in that business in this state, and that it had legally and properly created and maintained its agency for that purpose. And that the agency here, by a proper exer-

cise of its authority, had appointed the agent at Richmond to transact the business of the defendant and its New York agency required to be done at that place.

But even these assumptions, added to the circumstance that the defendant had organized a local board of directors at the city of New York, having authority to issue policies and adjust losses without consultation with the corporation itself, could not have the effect of changing the nature of the corporation under which all this was performed.

The board was organized and the agency was created by the act and under the authority of the corporation. The local board and the agency combined did not form or constitute a corporation, but simply the local means or agency through which the corporation carried on and transacted its business in this country. When the local board and agency issued a policy, collected a premium, adjusted a loss, or appointed a subordinate agency, it was not done for itself, but for the defendant. And the power exercised in performing either, or all of those acts, was derived from and used for the defendant.

No matter how formal or complicated such a local organization may be, it can only possess and exercise the power conferred by its foreign charter and the laws of the state upon the corporation itself. And when it makes use of such powers, it does so not as an independent body or in the nature of a subsisting corporation, but as an agency merely of the corporation under which such organization may have been effected. This is entirely apparent from the facts, that without the charter and the laws of the state relating to such corporation, the local board could be neither regularly organized or acquire the power of acting at all. And in case these laws were repealed and the charter were withdrawn, or the corporation were otherwise dissolved, the local board and agency would necessarily from that time cease to exist. It is not intended to be affirmed that the right of foreign corporations to transact business in this state is absolutely dependent upon the existence of some statutory regulation in their favor, but only that the transaction of such business is dependent upon a compliance with the provisions of those statutes while they may be maintained by the legislative authority of the state.

But it is maintained that while these laws are in existence a compliance with their requirements, whether it be by a mere

agency, properly so called, or by a local board of direction having a general charge and control over the American business of the corporation without any immediate dictation or control from the corporation itself, constitutes in fact, as well as in law, a mere agency, and nothing beyond that.

And this is insufficient to change the domiciliary nature of the corporation itself under whose power and authority, whether acquired by its foreign charter or the laws of the state relating to foreign insurance companies doing business here, this formal as well as efficient organization may have taken place. This organization was merely the medium through which the defendant carried on or transacted its American insurance business, the means through which it was done, not the body itself which did that business. Accordingly, where insurances were made, as is shown by the policy issued in this instance, it was the defendant that made the insurance and was to receive the premium for it, and pay the loss arising under it, and not the agency and board of directors existing in the city of New York. It is true, the money would pass into the hands of the local agency and under the control of the local board, when premiums were paid, and from them in the payment of losses accepted and adjusted by them; but still it would be all the time received and disbursed as the money of the defendant, in whose behalf and under whose authority the local board and agency alone had the power of acting.

As the contract of insurance made in this case was necessarily the contract of the defendant, therefore, when the war, or Southern insurrection, arose, it was not one which existed between a loyal citizen and a rebel, but of necessity between a neutral and a rebel, recognised by the defendant's government as a belligerent.

And recognition, although not binding upon or adopted in a friendly spirit to the government of the United States, was binding and controlling as authority upon the defendant. As a contract between a neutral and a rebel, or, as the defendant's government designated him, a belligerent, it was neither annulled nor suspended by the proclamation of the President or the laws of Congress, for they were not expressly or by necessary implication made applicable to cases of that character. The plaintiff was not therefore prevented from maintaining this action by anything rendering the insurance illegal which was effected in this case.

But by the terms of the policy, the right of the assured to

depend upon it as an insurance was rendered conditional upon the performance of the stipulations requiring payment of the premiums. By the written appointment of the agent at Richmond, no authority was conferred upon him to receive payment of insurance premiums. That appears to have been derived from what were called renewal receipts, which were forwarded from the agency at New York to the local agent, and by him delivered to the assured as the premiums were paid. Even this practice was discontinued after the early part of the year 1861. This discontinuance did not arise out of any disposition manifested by any act of the defendant, or the New York agency, to terminate its policies or to decline payment of its premiums, but on account of their inability to communicate readily with the local agent at Richmond. When it took place, the means of carrying on such communications had been interrupted and suspended by the insurrection. The facilities before that time supplied by the mails and express companies traversing the country had necessarily been withdrawn on account of the hostile and dangerous condition of the Southern States, and the only remaining means of communication was that which was supplied by individuals occasionally passing around or through the lines of military forces.

The agency at New York appears to have been of the most complete and general character, but still, as already shown, merely an agency. It therefore had the power to create and appoint subordinate agencies, wherever in its judgment the business of the defendant required them to be located. And this it could do either by writing or by parol. And when the appointment was made by writing and nothing limiting the action of the local agency was contained in it, the power of the local agent could afterwards without any legal impropriety be enlarged by parol. In this respect the New York agency was unrestricted by any limitations placed upon its action by the defendant, or the instruments used by itself for the creation of the subordinate local agency.

For while the written power of appointment issued to Cowardin in this case conferred certain authority upon him as agent for the defendant, not as agent for the New York agency at the city of Richmond, it contained nothing preventing additional authority being given to him, either by the New York agency or by the defendant itself. Neither was anything of that nature contained

in the renewal receipts. For by the printed instructions issued to him by the New York agency he was only prohibited from receiving premiums without a regular renewal receipt, in the absence of special authority for acting otherwise from the New York office. This agency could therefore authorize the subordinate agency to receive the premiums accruing on the defendant's policies without supplying him with renewal receipts for that purpose. And in the condition of the country, after the premium was paid in June 1861, which rendered the transmission of these renewal receipts impracticable, it was claimed on the part of the plaintiff that such authority was actually conferred.

Evidence was given on the trial tending to substantiate this claim, and on the part of the defendant to resist it. This evidence was of a conflicting nature, and as it was fairly submitted to the jury this court at the present time has no power to interfere with their conclusion upon that subject. They have found that the authority was conferred, substantially, of course, as the evidence on the part of the plaintiff tended to establish it. And if it was, it amounted to a general authority to the local agent at Richmond to receive the premiums without renewal receipts and without specific directions as to what he should receive them in. It was therefore a general authority to him to collect the premiums accruing in the defendant's favor upon the policies which it had previously issued. And this authority, under the well-settled principles of the law of agency, the agent became bound to his principal to make use of according to the ordinary course of the business he was employed in and the settled usages, if any were found to exist, relating to the subject. He could not, therefore, bind his principal or satisfy the powers of his agency by accepting property for the premiums, for that would convert the power to receive payment merely into an authority to traffic in merchandise.

But from the nature of the power to receive payment the agent necessarily derived the authority to accept whatever was generally used for the purpose of making payments in the locality where the debts were to be collected. As it has turned out, it would have been more profitable for the principal if the agent had collected the premium upon this insurance in gold coin or treasury notes of the United States. But where this authority to collect the premiums was exercised, it appears from the evidence that it

could not be either conveniently or effectively used in that manner, for gold was shown to have disappeared almost entirely from circulation, and it is a matter of history that the insurrectionary authorities discountenanced the use of United States treasury notes. When this authority was given, which the jury have found was conferred upon the agent at Richmond, there was no immediate indication that any further opportunity would be afforded for communicating with him while hostile relations existed between the government and the rebel states.

And it must therefore have been designed for his guide under circumstances at that time not fully anticipated or comprehended. The end to be obtained by the use and exercise of the authority was to be the payment of the indebtedness accruing to the defendant. And if circumstances should arise requiring the exercise of judgment and discretion in making the collection, it must have been intended that this agent should determine such matters for himself on account of the impracticability of communicating either with the defendant or the general agency located here for the procurement of special directions. Such emergencies must, from the nature of the times, have been necessarily within the expectation of the general agency, and when they arose afterwards it was the duty of the special agent to determine upon the best mode of securing the object of his principal under the circumstances. His duty as well as his authority was to collect the debts maturing in favor of the defendant. How that could best be done was necessarily left to his own prudence and judgment when the changes in the times rendered a determination upon that point indispensable to the exercise of his authority.

That such changes did arise is clearly shown by the evidence. For soon after the agent at Richmond was directed to collect the premiums without renewal receipts the actual currency of that locality was supplanted by Confederate notes of the insurrectionary government. Although not made a legal tender for the payment of debts, all other species of currency were soon driven out of circulation by them. And after that they were the financial means used for buying and selling property, and for creating and discharging debts. And while that was their character, and the premium upon gold and foreign exchange was not far above them, they were received by this agent in payment of the premiums due on this insurance.

The uncontradicted evidence given in the case is that these notes were issued soon after the passage of the act providing for them, which was on the 19th of August 1861.

And from that time they passed as of equal value with bank-notes, and during the residue of 1861 and through 1862, they were known as Confederate money and passed almost at par at Richmond. The acceptance of this currency as payment of the premiums upon the policy in suit, spurious and unlawful as the currency itself was, very materially differed from the acceptance of payment in property or in counterfeit notes or the notes of insolvent banks. For the acceptance of property was not within the spirit or scope of the agency, and the bills of insolvent banks and counterfeit notes would be wholly devoid of value and therefore no payment whatever in any just sense of that term. But these notes were not of that description, for they had a circulating value at the time the agent received them, and were used for all the ordinary purposes of currency. While in that condition he received them as payment, and from the hopeful account given by him of the prospects of the Confederacy, contained in his letter of June 1861, he undoubtedly did so in good faith, believing he was promoting his principal's interests by doing so. From the nature of the power which the jury have necessarily found was conferred upon him, the circumstances that must have been expected to attend the execution of it, the emergency he afterwards encountered, when the previous currency of his state was practically excluded from circulation by that which was issued by the Confederate authorities, the premiums upon this policy were in judgment of law paid when the defendant's agent received the amount due for them in these notes. It was the only possible mode under the circumstances existing at that time in which the premiums could be collected by him, and as it had been made his duty to obtain their payment, he was necessarily authorized to receive it in that manner.

But even if that authority were not a necessary incident of the power conferred upon him, still as he was authorized to collect the premiums, his acceptance of Confederate notes for the amount of them discharged the assured. For under the circumstances existing at the time when the authority to collect was conferred upon him, it could neither have been expected nor intended that the identical

currency received by him should be remitted to the general agency at the city of New York.

This currency, although valuable at Richmond, was worthless at New York. The only mode, therefore, in which the value it had at Richmond could be transmitted to New York was by purchasing gold or foreign exchange with it, and it appears from the evidence that it was capable of being so used. In addition to this, the course of business previously established between the New York and the Richmond agency, was for the agent at the latter place to make up his accounts and remit his collections once in each month, which was inconsistent with the obligation or expectation that the identical moneys received by him were to be remitted to the agency at New York. On the contrary, the notorious and general course of business in cases of that description was to purchase exchange with the local currency, and in that manner transmit its value to the place to which it was to be forwarded.

Not only the state of public affairs, but the customary mode shown to have been adopted in the transaction of this business also, indicate that it could not have been intended that the local currency used and received for the payment of debts at Richmond should be remitted in kind to New York. On the contrary, this was received for the convenient transaction of the business at the place where it fulfilled all the purposes and offices of a monetary currency. And accompanying its receipt was the corresponding duty to invest it in such funds or commercial paper as would enable him to transmit its local value to the general agents, whose business was carried on at a place where that local value had no existence.

Under this relation and obligation of the local agent, he became the defendant's debtor for the value of the Confederate currency at the time and place when and where it was received by him. And that obligation can only be effectually discharged by transmitting or paying that value in lawful money or its equivalent to the defendant's general agents at the city of New York.

By the acceptance of the premiums in Confederate notes the agent discharged the assured, but at the same time, under his obligations arising out of the peculiar circumstances of the case and the previous course of business between himself and the defendant's general agency, he became the defendant's debtor for the

amounts received with the duty of remitting it in such a manner to the general agency at New York as to transfer the full local value for the time being received by him to such agency.

Judgment affirmed.

LEGAL NOTES.

ENGLISH LAW OFFICERS—RECENT CHANGES.—The change of ministry in England on the resignation of Mr. Disraeli, at the close of last year, was followed by the usual changes in the law officers of the Crown. Sir WILLIAM PAGE WOOD, so long known as Vice-Chancellor, and more recently as Lord Justice of the Court of Appeal in Chancery, became Lord Chancellor, with a peerage, under the title of Lord HATHERLEY; Vice-Chancellor Sir G. M. GIFFARD succeeded Sir W. P. WOOD as Lord Justice; and W. M. JAMES, Q. C., was promoted to the vacant Vice-Chancellorship.

Sir ROBERT P. COLLIER became Attorney-General, and JOHN D. COLERIDGE, Q. C., Solicitor-General.

CONFEDERATE NOTES. LIABILITY OF CORPORATION IN THE SECEDING STATES TO STOCKHOLDER IN LOYAL STATES FOR DIVIDENDS DECLARED DURING THE WAR.—*Keppel v. The Railroad*, in the Circuit Court of the United States for the District of Virginia, was an action by a stockholder for an account for dividends during and subsequent to 1861, the plaintiff being then a citizen of Pennsylvania. It appeared that under the Confiscation Act passed by the Confederate Congress, August 30th 1861, and proceedings in a Confederate court, some of the plaintiff's shares were sold, and the rest delivered to a receiver, and dividends were thereafter paid by the company to the purchasers and the receiver until November 1864. No dividends had been declared since then, but on the fall of the Confederate government the proceedings under the Confederate Confiscation Act had been treated as nullities, and the company admitted the title to be in plaintiff. But the company claimed that the payments of the premiums from 1861 to 1864 were valid payments, having been made under compulsion of the laws of a *de facto* government; and secondly, even if this were not allowed, the only liability was to pay on demand in such currency as had been under necessity received by the railroad, and no demand having been made until such currency (i. e. Confederate notes) had become utterly worthless, no decree could be made against the company. CHASE, C. J., considered the nature of governments *de facto*, and was of opinion that the Confederacy was not such a *de facto* government that the courts of the United States were bound to uphold transactions under its authority, when they were prejudicial to the interests of citizens of other states excluded by the rebellion, and the policy of the United States, from the care of their interests within the states in rebellion. He was therefore of opinion that the payments of premiums to any but the plaintiff were unlawful and invalid; and that as the premiums were not set apart, nor was any force actually used, or even threatened, the facts did not present a case